

October 26, 2006

Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

2006 OCT 30 P 5:29

***Re: Complaint against Alan Mollohan, candidate for U.S. House of Representatives in the First District of West Virginia, the Alan Mollohan for Congress Committee, Richard S. Pizatella, Treasurer, and West Virginia Values, LLC***

MUR # 5870

Dear Sir:

This is a formal complaint to the Federal Election Commission (FEC) concerning the above-named entities. This complaint will demonstrate that West Virginia Values, LLC has made illegal coordinated communications to benefit the Alan Mollohan for Congress Committee, and has made illegal in-kind contributions to the same. The Alan Mollohan for Congress Committee is violating the law by participating in those illegal coordinated communications, as well as by accepting those excess in-kind donations and failing to properly report those donations.

West Virginia Values has run television advertisements in the First District of West Virginia in connection with the race for the US House of Representatives seat in that district. West Virginia Values considers these communications to be "independent expenditures" that are not coordinated with the Mollohan Campaign.

However, the West Virginia Values advertisements are clearly "coordinated communications" under the Federal Election Commission's regulations. Under 11 CFR 109.21, a communication is coordinated if it meets these three tests:

- 1) If the communication is paid for by a person other than the candidate, an authorized committee or a political party or agent of any of the foregoing;
- 2) If the communication satisfies at least one of the content standards in Paragraph (c) of the regulations;
- 3) If the communication satisfies at least one of the conduct standards in paragraph (d) of the regulations.

In this instance, the commercials are paid for by West Virginia Values, i.e., someone other than the Mollohan campaign or its agents, and West Virginia Values is not a political party committee. Therefore, the first element is satisfied.

The messages are electioneering communications and public communications under the applicable regulations and they expressly advocate the election or defeat of a clearly identified candidate for federal office. Thus, the content element of 11 CFR 109.21(c) is satisfied.

Finally, the conduct standards of 11 CFR 109.21(d) are met as well. Here, Jeffery Burum, the principal donor to West Virginia Values (\$50,000 out of \$60,000 in gross

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receipts), is the co-chairman of the National Housing Development Corporation, which has received \$31 million from the federal government through Mollohan earmarks over the last 5 years, according to the *Wall Street Journal*.

Burum also sits on the Board of Directors of the Vandalia Heritage Foundation, a non-profit organization created and controlled by Alan Mollohan. The Vandalia Heritage Foundation has received \$28 million through Mollohan earmarks over the last 5 years, according to the *Wall Street Journal*. Contact between Mollohan and the Vandalia Heritage Foundation is long standing, continuing, and well-documented.

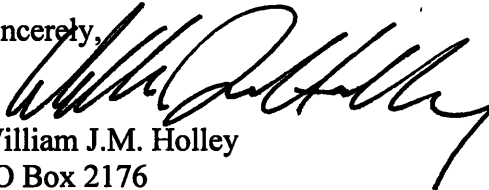
Additionally, Burum and his corporation have directly donated in excess of \$20,000 to Mollohan's political committees or his family foundation since 2002, according to documents filed with the FEC and West Virginia Secretary of State.

It is probable, in light of the long relationship and vast sums of money that Mollohan has directed to Burum's organizations (and vice versa), that coordination between them has occurred. This coordination seems all the more likely since Burum has a longstanding history of donating to Mollohan's political campaigns, but in this cycle (Mollohan's only competitive election in decades), Burum donated to West Virginia Values instead.

Therefore, the conduct standard of 11 CFR 109.21(d) has been violated. The expenditures by West Virginia Values in opposition to Chris Wakim cannot be independent expenditures and are therefore in-kind contributions to the Mollohan campaign well in excess of statutory maximums. According to FEC records, West Virginia Values has expended \$55,000 in opposition to Chris Wakim, vastly exceeding the amount that West Virginia Values could legally donate to the Mollohan campaign. The Mollohan campaign has therefore accepted illegally excessive contributions, and has moreover failed to report those contributions, in further violation of law.

I request that the FEC take immediate action to halt these illegal activities, and I further request that the FEC initiate a full investigation into the activities of West Virginia Values and the Mollohan campaign.

Sincerely,

  
William J.M. Holley  
PO Box 2176  
Wheeling, WV 26003

SUBSCRIBED AND SWORN to before me this 26<sup>th</sup> day of Oct, 2006

  
\_\_\_\_\_  
Notary Public in and for  
the state of West Virginia

Notary's Printed Name: Steven R. Merich  
My Commission Expires: MAY 9, 2011

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*Wall Street Journal*

*Helping Hands*

## Appropriations, Local Ties And Now a Probe of a Legislator

**West Virginia Rep. Mollohan**

**Has Real-Estate Holdings**

**That Also Bring Scrutiny**

**Growth of Budget 'Earmarks'**

By JOHN R. WILKE

April 7, 2006; Page A1

FAIRMONT, W.Va. -- On a mountaintop above old coal seams that once fueled West Virginia's economy, a gleaming steel-and-glass research center is taking shape, its winged design and 120-foot data tower visible for miles.

The \$136 million building is being built with taxpayers' money for the Institute for Scientific Research, a nonprofit group launched by the local congressman, Democrat Alan Mollohan, and funded almost entirely through provisions he put into annual spending bills.

A 12-term congressman, Mr. Mollohan sits on the House Appropriations Committee, a panel that disgraced lobbyist Jack Abramoff dubbed the "favor factory." Working with fellow West Virginian Sen. Robert Byrd, Mr. Mollohan has steered at least \$178 million to nonprofit groups in his district over the past five years using "earmarks" -- special-interest provisions that are slipped into spending bills to direct money to pet projects.

The money has brought more than jobs and building projects to his district. It has formed and financed a tight-knit network of nonprofit institutions in West Virginia that are run by people who contribute regularly to Mr. Mollohan's campaigns, political-action committee and a family foundation. One of these people also invests in real estate alongside Mr. Mollohan and his wife. The network of contributors also includes private companies that get contracts through these nonprofits.

Such a pattern raises questions about whether the donations or deals might be a way beneficiaries of earmarks could influence the legislator's actions. Now, federal prosecutors have opened an investigation of Mr. Mollohan's finances and whether they were properly disclosed, according to people contacted in the inquiry. Mr. Mollohan hasn't been accused of wrongdoing. A spokesman for the U.S. attorney's office in Washington, whose public-corruption unit is conducting the inquiry, declined to comment.

Mr. Mollohan said in an interview he had no knowledge of any investigation. But he said, "I welcome any review of my efforts to diversify the economy of West Virginia, as well as any of our financial investments. All of them are aboveboard, and we operate

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## Nonprofit Network

Some federal earmarks since 2000 for groups backed by Rep. Alan Mollohan (D., W.Va.)

NONPROFIT/PURPOSE	FEDERAL MONEY
Institute for Scientific Research (above) ■ Research, commercialization	\$76 million
West Virginia High Technology Consortium Foundation ■ Research, business-incubator services	\$31 million
Vandalia Heritage Foundation ■ Preservation, economic development	\$28 million
MountainMade Foundation ■ Promoting state crafts, artisans	\$6 million
Office Congressional records	

transparently." He added that "every one of the earmarks is held to the highest standards of accountability" and publicly disclosed. He said he was "extremely proud of what we've been able to do for my state."

For the first time in years, Mr. Mollohan is facing a serious Republican challenge for his seat, from a candidate with active backing of the White House. Mr. Mollohan said he didn't want to suggest that scrutiny of his earmarks might be politically motivated. But he also said, "I'd rather have this explained and understood now rather than a week before the election."

Central to the Mollohan network is a former staffer, Laura Kuhns, who heads the nonprofit Vandalia Heritage Foundation. It is a historic-preservation group that is financed almost exclusively by earmarks backed by Mr. Mollohan. It paid her \$102,000 in 2004. Vandalia is coordinating construction of the new building for the Institute for Scientific Research, or ISR, and Ms. Kuhns sits on its board and those of three other nonprofits that get funds via earmarks.

She and her husband also are partners with Mr. Mollohan and his wife in five properties in Bald Head Island, N.C., valued in local real-estate records at a total of \$2 million. The Mollohans recently bought a \$1.45 million oceanfront home on the island, called the Peppervine House, which they rent out for \$8,555 a week, next to the Kuhns' house, known as Cape Fearless. These and other investments, including a stake in a nine-story luxury condominium complex in Washington, appear to have made the Mollohans wealthy.

Mr. Mollohan's government financial disclosure form, which shows only broad ranges of debts and assets, showed household assets of up to \$565,000 in 2000, offset by debt of up to \$465,000, including \$100,000 in credit-card bills. Four years later, the couple's reported assets had soared to between \$6.3 million and \$24.9 million, with liabilities of \$3.7 million to \$13.5 million, mostly mortgages. Mr. Mollohan said his true assets are at the low end of those ranges.

He and Ms. Kuhns say there is no link between the earmark appropriations Mr. Mollohan pushed through Congress and their real-estate investments, and they deny any improprieties. Mr. Mollohan said that any time he invests with others in real estate, he puts in half the money to avoid the appearance of a conflict. "I wish you were correct that I'm worth millions, but in fact it's borrowed money," he said.

### Casting a Shadow

The previously undisclosed investigation of Mr. Mollohan, 62 years old, comes amid a still-continuing Abramoff probe that has cast a shadow over two top Republicans, Bob Ney of Ohio and former House Majority Leader Tom DeLay, who is giving up his seat from Texas. Another Republican, former Rep. Randall "Duke" Cunningham of

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California, who had also served on the Appropriations Committee, left Congress and was sentenced to prison last month after pleading guilty to accepting \$2.4 million in bribes from defense firms in exchange for earmarks and other favors. A criminal bribery investigation is under way into a Louisiana Democrat, Rep. William Jefferson, who has denied wrongdoing.

The cases are part of a widening attack on public corruption, with some 200 Federal Bureau of Investigation agents working on such cases nationwide, according to the chief of the Justice Department's criminal division, Alice Fisher. "We are seeing a surge in these cases and we're adopting aggressive tactics, including undercover operations," she said.

The House Ethics Committee, on which Mr. Mollohan is the senior Democrat, cautions lawmakers about ties to private entities because of the risk of actions inconsistent with their obligation to the public. The ethics panel has been unable to function -- despite the Abramoff corruption scandal, Washington's biggest in years -- because of a partisan squabble over staffing in which Mr. Mollohan has led his party's forces.

Mr. Mollohan was among House members embarrassed by having received campaign donations from MZM Inc., one of the contractors from which Mr. Cunningham admitted taking bribes. MZM and its executives gave \$23,000 to a political-action committee affiliated with Mr. Mollohan. A spokesman for Mr. Mollohan said that in December, he gave the MZM gifts to charity.

Mr. Mollohan attributes his success in real estate to the hard work of his wife, Barbara, who manages rentals at a 52-unit condo called The Remington. It offers one-bedroom suites on a weekly and monthly basis, advertising as "Washington's Best-Kept Secret." City records show its units are valued at between \$220,000 and \$275,000 each. The Mollohans have a half interest in 27 of them.

They co-own them with a relative, Joseph L. Jarvis, a retired businessman who received subcontracts from an Energy Department facility in Mr. Mollohan's district. Mr. Jarvis's business address at the time was a building constructed with money approved as a result of federal earmarks provided by Mr. Mollohan. Mr. Jarvis said his going into business with Mr. Mollohan had nothing to do with his prior work on the federal contracts.

The jump in Mr. Mollohan's wealth attracted the attention of the National Legal and Policy Center, a self-styled ethics-in-government nonprofit in Falls Church, Va. Funded by donations averaging \$100 to \$200, the conservative group helped ignite a procurement scandal a couple of years ago that brought down an Air Force contracting official and a chief financial officer of Boeing Co. The group said it found at least 200 misrepresentations or omissions in Mr. Mollohan's disclosure forms over the years that had the effect of grossly undervaluing his assets. It said it forwarded a list to prosecutors.

One focus of their probe is whether Mr. Mollohan's prior disclosure forms properly valued his interest in The Remington and fully disclosed income from it, said people

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close to the inquiry. Mr. Mollohan's accountant, Blair Eiler, said in an interview that the building's full value "may not have been properly reported in the early years" on the disclosure forms. He added that its value had risen sharply in recent years in the hot real-estate market.

### **More Scrutiny**

The probe could bring more scrutiny to earmarks. Attached to appropriations bills, they are usually intended to benefit a specific project in a congressman's district and often escape the scrutiny that is supposed to accompany public expenditures. The number of earmarks has risen sharply in the past decade, to 14,211 in fiscal 2004 from 4,155 10 years earlier, says the nonpartisan Congressional Research Service. The fiscal 2004 earmarks caused \$53 billion of federal spending.

Mr. Mollohan is well-positioned to press for earmarks. He has sat on the Appropriations Committee since 1986 and is the senior Democrat on a subcommittee handling appropriations for science projects and the departments of State, Justice and Commerce.

Mr. Mollohan acknowledges having steered federal-agency funds and tenants to a sprawling technology park where the mountaintop ISR building is under construction, even though in some instances the agencies didn't ask for these facilities. The park's anchor is named for him: the Alan B. Mollohan Center for Innovation. A bronze bust of the congressman surveys the lobby.

Government contractors and executives of the nonprofit groups in his network regularly give to his campaign and to an affiliated political-action committee, Summit PAC. A third conduit for funds is the Robert H. Mollohan Family Charitable Foundation, named for the congressman's father. It holds an annual charity golf tournament at the Pete Dye Golf Club in Bridgeport, W.Va., named a top-100 course by Golf Magazine. The tournament has been very successful. It received \$455,000 in contributions in 2003 -- the latest available figures -- from government contractors and other firms. The donors included at least two of the federally funded nonprofits, ISR and Vandalia, the group Ms. Kuhns runs.

A spokesman for Mr. Mollohan said the foundation's board wouldn't release a list of sponsors or their gifts "to respect their privacy." The family foundation gets staff and office services from the West Virginia High Technology Consortium, another Mollohan-backed nonprofit. Its executives are unpaid, however, according to federal tax filings.

The congressman rejects any link between campaign contributions and his efforts on behalf of his district. "I know where the lines are," he said. "Is it credible to say I encouraged the growth of these nonprofits to get fund-raising? That's ludicrous. These nonprofits should be judged on what they have done for the state." Every one of them has created jobs, boosted the economy or rescued natural resources, he said. And Mr. Mollohan said he has earned the political gifts that have come from government contractors and others "by being an effective and hard-working representative."

Ms. Kuhns has long been a central figure in the congressman's efforts to earmark spending for West Virginia. After leaving his staff, where she handled appropriations projects, 16 years ago, she went to work for a local real-estate developer that now does work for many of the Mollohan-funded nonprofits and employs her husband.

Since 2000, she has run Vandalia, which has won \$28 million in the past five years in federal funding to rehabilitate historic buildings and invest in depressed real estate in the district, largely through Mollohan-backed earmarks. Besides ISR, she serves on the board of MountainMade Foundation, a small federally funded nonprofit dedicated to promoting West Virginia crafts. She's also on the board of the only out-of-state foundation to get Mr. Mollohan's backing, the National Housing Development Corp. It is a California group that has won \$31 million in earmarks over five years.

Ms. Kuhns said she and her husband have done nothing wrong and have worked hard for West Virginia. "There's no smoking gun here," she said. "All of these entities are rigorously audited. There is a misperception that there is no accountability in earmarks. Nothing could be further from the truth."

ISR is the largest nonprofit funded by Mr. Mollohan's efforts, winning at least \$76 million of federal spending through his earmarks in the past five years. It paid its top three executives a total of \$777,000 in 2004, the latest available figures. The president of ISR, James Estep, said in an interview that it has created hundreds of West Virginia jobs and nurtured dozens of high-tech companies. From his office overlooking the I-79 Technology Park -- on 500 acres largely purchased with federal funds -- Mr. Estep pointed to bulldozers at a building site. "This was cow pasture in 1995. Now there are 1,000 people working here," he said.

The research center will offer laboratory and office space and huge manufacturing bays built into the mountain. Mr. Estep said he won't have trouble drawing tenants. Until then, he said he would fill part of the new building with a small robot-manufacturing firm spun off from the West Virginia High Technology Consortium -- another group funded by Mollohan-backed earmarks. The robot firm, known as Innovative Response Technologies and now a for-profit, recently won a \$10 million Navy contract for 3,500 mobile "BomBots" for remotely inspecting possible roadside bombs.

Mr. Mollohan earmarked \$3.75 million in the 2004 and 2005 Defense Department spending bills to develop the robots, funneling the money to the nonprofit consortium. The new Navy contract will be shared with another defense firm in Mr. Mollohan's district that has also been a contributor to his campaign, called Azimuth Corp.

Mr. Mollohan said he had no role in getting the Navy contract and applauded the work. But he acknowledged he sometimes has pressed federal agencies to spend money for projects they didn't want. The FBI and National Aeronautics and Space Administration didn't seek to move operations into the I-79 Technology Park in West Virginia, he said, but they're now part of a thriving federal-services sector in the state. "I'm sure that NASA

didn't want to build the space center in Houston, either, when Lyndon Johnson sent them out there," he said.

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